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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MARIA PAREDES,

Cross-Complainant and Appellant,

v.

JANET PAREDES et al.,

Cross-Defendants and Respondents.

B234319

(Los Angeles County
Super. Ct. No. BC365058)

APPEAL from an order of the Superior Court of Los Angeles County.

Terry Green, Judge. Affirmed.

Michael Leight for Cross-Complainant and Appellant.

Levy, Small and Lallas, Tom Lallas and John P. Mertens for Cross-Defendants
and Respondents.

Maria Paredes appeals from the trial court's order striking her cross-complaint as a SLAPP and dismissing her action. We affirm.

PROCEEDINGS BELOW

We summarize the allegations of the complaint and cross-complaint.

Janet, Alice, Mercedes and Elizabeth Paredes (the Daughters) brought an action against their father and stepmother, Edgardo and Maria Paredes, for fraud, breach of fiduciary duty, an accounting and to quiet title. The Daughters alleged that they are the sole owners of various parcels of real estate in Los Angeles County. They claimed that between 1994 and 2003 Maria and Edgardo caused deeds to be forged and recorded purporting to convey some of these properties to Maria as her separate property and the other properties to Edgardo and Maria as joint tenants.

Maria filed a cross-complaint against the Daughters and Edgardo. It contains the following allegations. Edgardo, in an attempt to hide assets from potential judgment creditors, "fraudulently convey[ed] his interest in certain Properties" to the Daughters. After the threat of collections on judgments ended, Edgardo had most of these properties reconveyed to himself or to Maria, or to himself and Maria, as joint tenants. After these reconveyances were completed Maria filed for dissolution of their marriage. An issue in the dissolution action involves the ownership of the properties claimed by Edgardo and Maria including the properties that Edgardo had conveyed to the Daughters and which were later reconveyed. The Daughters were joined as necessary parties in the dissolution action. While the dissolution action was pending, the Daughters filed the underlying lawsuit against Maria and Edgardo "falsely claiming an ownership interest" in the properties Edgardo previously conveyed to them and "falsely claiming that Maria forged their signatures" on the deeds reconveying the properties to Edgardo and Maria.

Maria's cross-complaint further alleges that "[t]he ulterior purpose and motivation of [the Daughters] in abusing the court's process by filing their [complaint] against Maria was to assist Edgardo in obtaining a collateral advantage over Maria in the Dissolution by forcing her to expend money for attorney fees and costs to defend herself based upon

Edgardo’s belief that Maria would give up and would relinquish her interests in the Properties to Edgardo.” Finally, Maria alleges: “The Daughters’ actions in this case have unnecessarily impeded and complicated the resolution of the Dissolution between Maria and Edgardo, and have forced Maria to expend substantial monies on attorney fees and costs in defending the false claims made against her in this case by the Daughters[.]”

The Daughters responded to Maria’s cross-complaint with a motion to strike under the SLAPP statute (Code Civ. Proc., § 425.16)¹ contending that Maria’s claims arise from the Daughters’ constitutionally protected activity under the SLAPP statute (§ 425.16, subds. (b)(1) and (e)(1)) and that Maria has no probability of prevailing on those claims (§ 425.16, subd. (b)(1)). The trial court agreed with the Daughters. It granted the motion to strike and awarded the Daughters attorney fees in the amount of \$3000 under section 425.16, subdivision (c)(1).² Maria filed a timely appeal under section 425.16, subdivision (i).

DISCUSSION

In reviewing an order granting or denying a SLAPP motion, we independently determine whether the defendant has made a threshold showing that the plaintiff’s lawsuit is one “arising from” the defendant’s exercise of the right of petition or free speech and, if so, whether the plaintiff has demonstrated “a probability” of prevailing on the claim. (§ 425.16, subd. (b)(1); *Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.) Here, we conclude the Daughters showed that Maria’s cross-complaint arose from their protected speech and petitioning activity and Maria has failed to show that she has a probability of prevailing on her cross-complaint against the Daughters because the cross-complaint does not state a cause of action against them.

¹ All statutory references are to the Code of Civil Procedure.

² Edgardo did not cross-complain against Maria nor join in the Daughters’ SLAPP motion.

I. MARIA’S CROSS COMPLAINT ARISES FROM THE DAUGHTERS’ PETITIONING ACTIVITY

A defendant (here a cross-defendant) satisfies the first prong of the SLAPP statute if she shows that the plaintiff’s (here cross-complainant’s) claim is one “arising from any act of [the defendant] in furtherance of [the defendant’s] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue[.]” (§ 425.16, subd. (b)(1).) The statute defines “act [of the defendant] in furtherance of [the defendant’s] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue” to include “any written or oral statement or writing made before a . . . judicial proceeding[.] . . .” (§ 425.16, subd. (e)(1).) In determining whether the plaintiff’s claim falls within section 425.16, subdivision (e), we “consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).)

Examination of Maria’s cross-complaint reveals that the Daughters’ acts about which Maria complains fall squarely within section 425.16, subdivision (e)(1). In her cross-complaint Maria alleges that the Daughters brought the underlying suit “falsely claiming an ownership interest” in the property at issue in the dissolution action with the “ulterior purpose and motivation . . . to assist Edgardo in obtaining a collateral advantage over Maria in the Dissolution by forcing her to expend money for attorney fees and costs to defend herself[.]” Finally, Maria alleges: “The Daughters’ actions in this case have unnecessarily impeded and complicated the resolution of the Dissolution between Maria and Edgardo, and have forced Maria to expend substantial monies on attorney fees and costs in defending the false claims made against her in this case by the Daughters[.]”

The record thus establishes that Maria’s cross-complaint is based on statements by the Daughters in their underlying complaint, i.e. in a “judicial proceeding.” As Maria herself states in her brief on appeal: the Daughters, “despite knowing that the properties did not belong to them, continued to conspire with Edgardo by filing their lawsuit against

Maria in order to help Edgardo cheat Maria out of her interest in the properties in the Dissolution Action because they knew she could not afford to litigate on two fronts[.]”

II. MARIA’S CROSS-COMPLAINT DOES NOT STATE A CAUSE OF ACTION AGAINST THE DAUGHTERS

A plaintiff (here cross-complainant) satisfies the second prong of the SLAPP statute if she establishes “that there is a probability that [she] will prevail on the claim.” (§ 425.16, subd. (b)(1).) “[I]n order to establish the requisite probability of prevailing . . . the plaintiff need only have “stated and substantiated a legally sufficient claim.” . . . ‘Put another way, the plaintiff “must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.”’” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89, citations omitted.) As we explain below, Maria’s cross-complaint fails to state a cause of action against the Daughters. Thus, Maria has not established the requisite probability of prevailing on the merits.

Maria alleges “as a second cause of action against all cross-defendants,” (i.e. the Daughters and Edgardo),³ that “[a]s a result of the tortious misconduct of all cross-defendants, jointly and severally, Maria has been forced to incur attorney fees and litigation costs *to defend against the Daughters’ false claims* alleged in their lawsuit and she is, therefore, under [the] theory of ‘tort of another,’ entitled to recover all of her attorney fees and costs incurred herein.” (Italics added.) On appeal she repeats her theory of recovery against the Daughters. “The second cause of action, against which the motion to strike was directed, is for ‘*damages based upon the tort of another.*’ The ‘tort’ consists both of violation of the Fraudulent Transfer Act, as well as participation in an illegal agreement tending to defraud or otherwise injure a third person.” (Italics in original.)

Maria’s cross-complaint does not state a cause of action against the Daughters for “tort of another” because “tort of another” is not itself a separate wrong but rather a

³ The first cause of action is against Edgardo alone.

theory of damages under which a plaintiff may recover attorney fees and costs against a defendant whose tort required the plaintiff to incur those fees and costs in bringing or defending an action by or against a third party. The theory was stated by Justice McComb in the seminal case of *Prentice v. North Amer. Title Guar. Corp.* (1963) 59 Cal.2d 618, 620: “A person who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover compensation for the reasonably necessary loss of time, attorney’s fees, and other expenditures thereby suffered or incurred.” For example: A knowingly sells stolen goods to B, who believes A to be the owner. C, the true owner, sues B for conversion. B can recover from A the amounts he reasonably expends in defense of C’s tort suit and in satisfaction of any judgment against him. (Rest.2d Torts, § 914(2), illus. 1.)

Here, Maria alleges that she “has been forced to incur attorney fees and litigation costs *to defend against the Daughters’ false claims* alleged in their lawsuit.” (Italics added.) Thus, she does not allege wrongdoing on the part of a third person which has caused her injury. Rather, she alleges that the daughters wronged her directly. For these reasons, Maria’s cross-complaint does not state a cause of action against the Daughters. Therefore the trial court ruled correctly in striking the cross-complaint against the Daughters as a SLAPP. (Whether Maria’s cross-complaint states a cause of action against Edgardo is not an issue in this appeal.)⁴

⁴ The Daughters ask us to impose monetary sanctions on Maria and her counsel on the grounds that the appeal was frivolous and taken solely for the purpose of delay. We decline to do so. The Daughters are entitled to reasonable attorney fees on appeal. (§ 425.16, subd. (c)(1); *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659-660.)

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs and attorney fees on appeal. The matter is remanded to the trial court to determine the amounts of those costs and fees.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.